

**Article 6: Collection, Transportation and Disposal of Refuse and Solid Waste****Division 9: Single Use Plastic Reduction**

*(“Single Use Plastic Reduction” added 1-24-2019 by O-21030 N.S.; effective 2-23-2019.)*

**§66.0901 Definitions**

For purposes of this Division, the following definitions apply. Words defined in this Division appear in text in italics.

*City facility* means any building, structure, park, beach, or vehicle owned or operated by the City of San Diego.

*Director* means the Director of the Environmental Services Department or successor department, or designee.

*Distribute* means to provide or offer to provide an item, either as a separate transaction or as part of a transaction for another item, regardless of whether compensation is received.

*Egg carton* means a container commonly used to package eggs sold to retail consumers.

*Food service ware* means containers, bowls, plates, trays, cups, lids, and other similar items that are designed for one-time use for *prepared food*, including containers for takeout food or leftovers. *Food service ware* does not include *polystyrene foam* coolers and ice chests.

*Food tray* means a tray commonly used for packaging food sold to retail consumers.

*Food vendor* means any retail establishment that sells *prepared food* for consumption, including from a temporary facility, cart, vehicle, or mobile unit.

*Polystyrene foam* means blown polystyrene and expanded and extruded foams, also known by the trademarked name Styrofoam, which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, without limitation, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

(2-2019)

*Prepared food* means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared within the City of San Diego for individual consumers. *Prepared food* includes takeout food, but does not include raw eggs or raw, butchered meats, fish, or poultry.

*Recyclable* has the same meaning as in Municipal Code section 66.0102.

*Utensil* means a straw, fork, spoon, or knife made predominately of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources. Items made from non-plastic materials, including paper, pasta, sugar cane, wood, or bamboo, are not *utensils*.

(“Definitions” added 1-24-2019 by O-21030 N.S.; effective 2-23-2019.)

#### **§66.0902 Distribution of Polystyrene Foam Prohibited**

- (a) No person may *distribute egg cartons, food service ware, or food trays* made, in whole or in part, from *polystyrene foam*.
- (b) No person may *distribute* the following items made, in whole or in part, from *polystyrene foam* that is not wholly encapsulated or encased within a non-*polystyrene foam* material:
  - (1) coolers, ice chests, or similar containers;
  - (2) pool or beach toys; or
  - (3) dock floats, mooring buoys, or anchor or navigation markers.

(“Distribution of Polystyrene Foam Prohibited” added 1-24-2019 by O-21030 N.S.; effective 2-23-2019.)

#### **§66.0903 Use of Non-Compliant Polystyrene Foam Prohibited**

No person shall use the products prohibited from distribution in section 66.0902 in or at *City facilities*.

(“Use of Non-Compliant Polystyrene Foam Prohibited” added 1-24-2019 by O-21030 N.S.; effective 2-23-2019.)

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**§66.0904 Exception from Prohibitions**

It shall not be a violation of section 66.0902(a) to *distribute prepared food* packaged in *food service ware* or use *food trays* made, in whole or in part, from *polystyrene foam*, if the *prepared food* is packaged outside the City and is provided to the consumer as originally packaged.

(“*Exception from Prohibitions*” added 1-24-2019 by O-21030 N.S.; effective 2-23-2019.)

**§66.0905 Utensils Restricted**

- (a) A *food vendor* may only *distribute utensils* for takeout orders of *prepared food* upon the request of the person ordering the *prepared food*.
- (b) A *food vendor* may only *distribute* straws, as defined as a *utensil*, upon request of the person ordering the *prepared food*.

(“*Utensils Restricted*” added 1-24-2019 by O-21030 N.S.; effective 2-23-2019.)

**§66.0906 Implementation**

- (a) The *Director* shall, within 30 days after February 23, 2019, publish on the City’s website and distribute to interested parties who have requested notice, information regarding acceptable alternative *food service ware* and *food tray* products that are not prohibited by section 66.0902(a).

The person using a product as *food service ware* or a *food tray* will have the burden of establishing that the product complies with section 66.0902(a).

- (b) The *Director* shall maintain and update the published information referenced in section 66.0906(a), as may be appropriate.
- (c) An applicant may seek a waiver or a renewal of a waiver in accordance with this section by submitting a written application on a form approved by the *Director*. Applications for renewals must be submitted no later than 60 days prior to the expiration of the previous waiver. The *Director* may require the applicant to submit additional information or documentation before making a determination regarding the waiver.
- (d) The *Director* may waive the provisions of section 66.0902(a) regarding *food service ware* and *food trays* in accordance with the following:

- (1) Feasibility-based hardship. The applicant seeking the waiver must demonstrate to the *Director's* satisfaction that no reasonably feasible alternative exists to a specific non-compliant material.
  - (2) Financial hardship. An individual or an entity may seek a financial hardship waiver. The applicant seeking the waiver must demonstrate to the *Director's* satisfaction that the following criteria are met:
    - (A) The applicant has a gross income of less than \$500,000 on the applicant's annual Federal income tax filing for the most recent tax year, however, a waiver sought on behalf of an entity must be based on the entity's income, and
    - (B) With respect to each specific non-compliant product, there is no suitable and reasonably affordable alternative product available.
  - (3) Contractual requirement. The applicant seeking a waiver based on an existing contractual requirement must demonstrate to the *Director's* satisfaction that a contract to purchase a non-compliant material was entered into within one year prior to February 23, 2019, in which case the *Director* may waive the requirements of section 66.0902 for one year until February 23, 2020.
- (e) The *Director* may grant feasibility-based or financial hardship waivers in whole or in part, with or without conditions, for up to 24 months if the applicant or City official seeking the waiver has demonstrated to the *Director's* satisfaction that strict application of the specific requirement would create a continued feasibility-based or financial hardship pursuant to section 66.0906(d)(1) or (2) or there are special circumstances or conditions that are peculiar to the applicant and these circumstances or conditions are not the result of any act of the applicant's after February 23, 2019 and the waiver is the minimum relief necessary to address the special circumstances or conditions. The *Director* shall base his or her determination on the most current information available. The *Director* may grant renewals for up to 24 months, based on the same criteria. Subsequent renewals for up to 24 months, based on the same criteria, may be applied for and granted.
- (f) The *Director's* determination regarding a waiver shall be final and shall not be subject to appeal.

(“Implementation” added 1-24-2019 by O-21030 N.S.; effective 2-23-2019.)

(2-2019)

**§66.0907      Enforcement and Penalties**

The *Director* shall issue a written warning to any person he or she determines is violating this Division as a first offense. If, after issuing a written warning of violation, the person continues to violate the same provision of this Division, the City may impose the other enforcement remedies set forth in San Diego Municipal Code Chapter 1.

*(“Enforcement and Penalties” added 1-24-2019 by O-21030 N.S.; effective 2-23-2019.)*